

Introduced by Senator Wright

January 27, 2014

An act to amend Section 98 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 919, as introduced, Wright. Employees: wage disputes.

Existing law authorizes the Labor Commissioner to investigate employee complaints and enforce statutes and orders of the Industrial Welfare Commission that, among other things, specify the requirements for the payment of wages by employers. Under existing law, the Labor Commissioner is authorized to provide for a hearing for an action to recover wages, penalties, and other demands for compensation, as specified. Existing law requires a party who receives actual notice of a wage dispute claim before the Labor Commissioner to notify the commissioner in writing of any change in the party's business or personal address, as specified, for purposes of being served with a notice of hearing on the matter.

Existing law prohibits a default from being taken against a defendant that fails to appear or answer within the time allowed, and requires the Labor Commissioner to hear the evidence offered and issue an order, decision, or award in accordance with the evidence.

This bill would provide that a party that has failed, without just and substantial cause, to timely provide the above-described change of address information is subject to repayment of treble the amount of all costs incurred by the opposing party in attempting to perfect service. The bill would allow for a default to be taken against a defendant that has willfully evaded service of process to avoid responsibility for unpaid wages or penalties, under specified circumstances.

The bill also would make various technical, nonsubstantive changes to the above provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 98 of the Labor Code is amended to read:

2 98. (a) (1) The Labor Commissioner is authorized to
3 investigate employee complaints. The Labor Commissioner may
4 provide for a hearing in any action to recover wages, penalties,
5 and other demands for compensation, including liquidated damages
6 if the complaint alleges payment of a wage less than the minimum
7 wage fixed by an order of the Industrial Welfare Commission or
8 by statute, properly before the division or the Labor Commissioner,
9 including orders of the Industrial Welfare Commission, and shall
10 determine all matters arising under his or her jurisdiction. It is
11 within the jurisdiction of the Labor Commissioner to accept and
12 determine claims from holders of payroll checks or payroll drafts
13 returned unpaid because of insufficient funds, if, after a diligent
14 search, the holder is unable to return the dishonored check or draft
15 to the payee and recover the sums paid out. ~~Within~~

16 (2) *Within* 30 days of the filing of the complaint, the Labor
17 Commissioner shall notify the parties as to whether a hearing will
18 be held, whether action will be taken in accordance with Section
19 98.3, or whether ~~no~~ further action will *not* be taken on the
20 complaint. If the determination is made by the Labor Commissioner
21 to hold a hearing, the hearing shall be held within 90 days of the
22 date of that determination. However, the Labor Commissioner
23 may postpone or grant additional time before setting a hearing if
24 the Labor Commissioner finds that it would lead to an equitable
25 and just resolution of the dispute. ~~A~~

26 (3) A party ~~who~~ *that* has received actual notice of a claim before
27 the Labor Commissioner shall, while the matter is before the Labor
28 Commissioner, notify the Labor Commissioner in writing of any
29 change in that party's business or personal address within 10 days
30 after the change in address occurs. *A party that has failed, without*
31 *just and substantial cause, to timely provide change of address*
32 *information as required by this paragraph shall be subject to*
33 *repayment of treble the amount of all costs incurred by the*

1 *opposing party in attempting to perfect service. The Labor*
2 *Commissioner shall include these costs in any order, decision, or*
3 *award under this section.*

4 ~~It~~

5 (4) *It is the intent of the Legislature that hearings held pursuant*
6 *to this section be conducted in an informal setting preserving the*
7 *rights of the parties.*

8 (b) *When a hearing is set, a copy of the complaint, which shall*
9 *include the amount of compensation requested, together with a*
10 *notice of time and place of the hearing, shall be served on all*
11 *parties, personally or by certified mail, or in the manner specified*
12 *in Section 415.20 of the Code of Civil Procedure.*

13 (c) *Within 10 days after service of the notice and the complaint,*
14 *a defendant may file an answer with the Labor Commissioner in*
15 *any form as the Labor Commissioner may prescribe, setting forth*
16 *the particulars in which the complaint is inaccurate or incomplete*
17 *and the facts upon which the defendant intends to rely.*

18 (d) *No pleading other than the complaint and answer of the*
19 *defendant or defendants shall be required. Both the complaint and*
20 *answer shall be in writing and shall conform to the form and the*
21 *rules of practice and procedure adopted by the Labor*
22 *Commissioner.*

23 (e) *Evidence on matters not pleaded in the answer shall be*
24 *allowed only on terms and conditions the Labor Commissioner*
25 *shall impose. In all these cases, the claimant shall be entitled to a*
26 *continuance for purposes of review of the new evidence.*

27 (f) ~~It~~(1) *Except as otherwise provided in paragraph (2), if the*
28 *defendant fails to appear or answer within the time allowed under*
29 *this chapter, no a default shall not be taken against him or her the*
30 *defendant, but the Labor Commissioner shall hear the evidence*
31 *offered and shall issue an order, decision, or award in accordance*
32 *with the evidence. A defendant failing to appear or answer, or*
33 *subsequently contending to be aggrieved in any manner by want*
34 *of notice of the pendency of the proceedings, may apply to the*
35 *Labor Commissioner for relief in accordance with Section 473 of*
36 *the Code of Civil Procedure. The Labor Commissioner may afford*
37 *this relief. No A right to relief, including the claim that the findings*
38 *or award of the Labor Commissioner or judgment entered thereon*
39 *are void upon their face, shall not accrue to the defendant in any*

1 court unless prior application is made to the Labor Commissioner
2 in accordance with this chapter.

3 (2) *A default may be taken against a defendant that has willfully*
4 *evaded service of process to avoid responsibility for unpaid wages*
5 *or penalties. The Labor Commissioner, as a matter of a just and*
6 *reasonable inference, may exercise his or her discretion under*
7 *this paragraph to enter a default judgment against an employer,*
8 *upon a showing of both of the following:*

9 (A) *The Labor Commissioner has attempted to serve notice of*
10 *a hearing or conference by personal service, service by certified*
11 *mail, service by overnight delivery service with confirmation of*
12 *delivery provided to the Labor Commissioner by the delivery*
13 *service, or in the manner specified in Section 415.20 of the Code*
14 *of Civil Procedure. That attempted service shall have been directed*
15 *to the address included on the most recent wage statement or check*
16 *issued to the employee, the current address provided to the Labor*
17 *Commissioner as a condition of any licensing requirement, or the*
18 *address for service of process for the employer that is on file with*
19 *the Secretary of State.*

20 (B) *The Labor Commissioner has established any of the*
21 *following factors:*

22 (i) *The defendant has multiple outstanding failures to notify the*
23 *Labor Commissioner of changes to its business or personal*
24 *address.*

25 (ii) *The defendant has a prior history of failure to timely notify*
26 *the Labor Commissioner or other state or local agencies of its*
27 *business or personal address change, as required by state or local*
28 *law or regulation.*

29 (iii) *The defendant refused to accept delivery of the certified*
30 *mail or overnight delivery of the notice of conference or hearing,*
31 *despite the fact that the defendant was conducting business at the*
32 *address at which delivery was attempted.*

33 (iv) *The defendant has a prior history of any of the following:*

34 (I) *Failing to satisfy judgments for wages and penalties by*
35 *evading service.*

36 (II) *Staging an artificial business shutdown.*

37 (III) *Engaging in deception with respect to the ability to pay*
38 *wages due.*

39 (IV) *Engaging in or attempting bankruptcy fraud with respect*
40 *to wages owed.*

1 (V) *Hiding, or attempting to hide, personal or business assets.*

2 (VI) *Breaching settlement agreements involving unpaid wages*
3 *or penalties.*

4 (VII) *Issuing a check for wages or penalties due to an employee*
5 *from an account with insufficient funds.*

6 (VIII) *Selling business assets, including real estate, in an attempt*
7 *to avoid paying wages or penalties pursuant to an order, decision,*
8 *award, judgment, or settlement agreement.*

9 (v) *The defendant has provided a false or misleading business*
10 *or personal address to any state or local entity.*

11 (vi) *The defendant has engaged in any unlawful conduct in*
12 *avoiding service.*

13 (vii) *The defendant has a prior history of engaging in coercion*
14 *or retaliation against current or former employees for exercising*
15 *any right provided for in this code, including the right to file a*
16 *claim for unpaid wages or penalties against the defendant or the*
17 *defendant's business.*

18 (3) (A) *Paragraph (2) shall not be construed to alter a*
19 *defendant's rights of de novo appeal under Section 98.2 following*
20 *the issuance of an order, decision, or award against it. If a default*
21 *is taken against a defendant and the defendant contends that it is*
22 *aggrieved by want of notice of the proceedings under this section,*
23 *the defendant may apply to the Labor Commissioner for, and the*
24 *Labor Commissioner may afford, relief in accordance with Section*
25 *473 of the Code of Civil Procedure.*

26 (B) *No right to relief, including the claim that the findings or*
27 *award of the Labor Commissioner or the judgment entered is void*
28 *upon its face, shall accrue to the defendant in any court, unless*
29 *prior application is made to the Labor Commissioner in*
30 *accordance with this chapter.*

31 (g) *All hearings conducted pursuant to this chapter are governed*
32 *by the division and by the rules of practice and procedure adopted*
33 *by the Labor Commissioner.*

34 (h) (1) *Whenever a claim is filed under this chapter against a*
35 *person operating or doing business under a fictitious business*
36 *name, as defined in Section 17900 of the Business and Professions*
37 *Code, which relates to the person's business, the division shall*
38 *inquire at the time of the hearing whether the name of the person*
39 *is the legal name under which the business or person has been*

1 licensed, registered, incorporated, or otherwise authorized to do
2 business.

3 (2) The division may amend an order, decision, or award to
4 conform to the legal name of the business or the person ~~who~~ *that*
5 is the defendant to a wage claim, if it can be shown that proper
6 service was made on the defendant or ~~his or her~~ *its* agent, unless
7 a judgment had been entered on the order, decision, or award
8 pursuant to subdivision ~~(d)~~ *(e)* of Section 98.2. The Labor
9 Commissioner may apply to the clerk of the superior court to
10 amend a judgment that has been issued pursuant to a final order,
11 decision, or award to conform to the legal name of the defendant,
12 if it can be shown that proper service was made on the defendant
13 or ~~his or her~~ *its* agent.